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FM AMEMBASSY MBABANE
TO RUEHC/SECSTATE WASHDC 3935
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE

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C O R R E C T E D C O P Y //TEXT-PARAGRPH 1//

SIPDIS

DEPT FOR AF/S FOR MAYA HARRIS, S/GAC FOR CHARLES HOLMES AND MICHELE
MOLONEY-KITTS

E.O. 12356: N/A

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SUBJECT: PROPERTY LEGAL DECISION: VICTORY FOR SWAZI WOMEN AND
JUDICIAL POWERS

¶1. In a High Court decision hailed as a victory for Swazi women, Justice Qinisile Mabuza issued a ruling on February 23 to allow married women to register and own property, overturning an unconstitutional law. Equally significant, the court ruling advanced the principle that courts have the right to alter legislation in lieu of striking down an entire unconstitutional law or section, especially in light of government inaction in bringing existing legislation in line with the constitution.

¶2. Surprisingly, Acting Governor of the Ludzidzini Royal Residence Timothy Velabo Mthethwa, an authority on Swazi Law and Tradition, spoke in favor of the ruling. He told the media that "the country's constitution, which is the supreme law by the Swazi people and for the Swazi people, gives women the right to equality, and since the court has ruled in favor of the wishes of the people, no one can stand in the way of that judgment." Regarding whether women could register Swazi Nation Land, not covered in this ruling, in their names, he indicated that that debate is shifting due to the constitution. Note: Swazi Nation Land is communally held and controlled by chiefs in trust for the king and nation, in contrast to the privately owned title deed land covered under this court decision. End Note.

¶3. The High Court used the legal concept of "severing" and "reading in" to amend section 16 of the Deeds Registry Act, striking out the words "not" and "save" and adding the word "even" to permit married women to register or receive immovable property, bonds, and other real rights. This ruling covers women married "in community of property," distinct from women married under Swazi Law and Tradition or women who entered marriage with a prenuptial agreement.

¶4. COMMENT: Justice Qinisile's ruling constitutes an unusual example of judicial activism for Swaziland. Although the decision itself favors a political activist, it extends a right, albeit rarely exercised, that already exists under Swazi customary law. We do not expect that the government will appeal it. END COMMENT.

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